

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Annual Assessment of the Status) CS Docket No. 96-133
of Competition in the Market for)
the Delivery of Video Programming)

COMMENTS OF AMERITECH NEW MEDIA, INC.

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COMMENTS OF AMERITECH NEW MEDIA, INC.

I.

INTRODUCTION AND SUMMARY

Ameritech New Media, Inc. respectfully offers the following information and comments on the Notice of Inquiry ("NOI") released in the above-captioned docket on June 13, 1996. In the NOI, the Commission invites commenters "to submit data, information, and analysis regarding the cable industry, existing and potential competitors to cable systems, and the prospects for increased competition in markets for the delivery of video programming."¹ The Commission will use the information it collects in this docket to prepare its annual report to Congress on the status of competition for the delivery of video programming.²

¹ NOI at par. 2.

² 47 U.S.C. Section 548(g).

Over the past year, Ameritech New Media has provided the Commission with comments on issues which touch on various aspects of the matters raised in the NOI. Those comments will not be repeated here. Instead, Ameritech New Media will (a) identify those areas in the midwest region where Ameritech New Media has been awarded a cable franchise during the last year, (b) describe the response of some cable competitors to stymie Ameritech New Media's efforts to provide customers with a choice for satisfying their demand for video programming, (c) explain the apparent limits of the Commission's program access rules when it comes to ensuring that new entrants will have reasonable access to comparable programming, and (d) highlight how the program access problem might be exacerbated by exclusive distribution arrangements by programmers who are not obliged to follow the Commission's program access rules.

II.

AMERITECH NEW MEDIA'S COMPETITIVE PRESENCE IN THE MIDWEST REGION

The Commission asks in the NOI for information about the state of competition among cable television providers across the nation. Although competition among multichannel video programming distributors (MVPDs) remains in a nascent state in the midwest, Ameritech New Media continues to enter that market in various municipalities under the Commission's Title

VI rules for cable television service. The following table shows the communities in which Ameritech New Media has been awarded cable television franchises to date:

<u>State</u>	<u>Community</u>	<u>Franchise Effective Date</u>	<u>Community Population</u>
IL	Glendale Heights	08/17/95	30,000
IL	Naperville	02/06/96	105,000
MI	Canton Township	07/11/95	62,000
MI	Fraser	11/15/95	14,000
MI	Garden City	05/01/96	32,000
MI	Lincoln Park	07/01/96	42,000
MI	Northville	07/21/95	6,300
MI	Northville Twp.	11/09/95	19,000
MI	Plymouth	08/28/95	10,000
MI	Plymouth Twp.	06/27/95	28,000
MI	Southgate	12/05/95	30,000
MI	Troy	04/22/96	80,000
MI	Wayne	05/28/96	20,000
OH	Berea	07/17/96	20,000
OH	Columbus	04/29/96	600,000
OH	Hilliard	04/10/96	18,000
OH	North Olmsted	04/09/96	35,000
OH	Perry Township	07/01/96	6,500
OH	Upper Arlington	04/25/96	36,000
WI	Greendale	01/24/96	15,000

However, notwithstanding the progress Ameritech New Media has made over the past 12 months in obtaining these municipal franchises to provide cable service, the incumbent cable operator in each of these communities today retains virtually 100% of the multichannel video programming market.

III.

RESPONSE OF INCUMBENT CABLE OPERATORS TO AMERITECH NEW MEDIA'S ATTEMPTS TO ENTER THE CABLE TELEVISION BUSINESS

As Ameritech New Media has attempted to enter the cable television business, the incumbent has employed different tactics to prevent customers from gaining a competitive alternative for video programming. For example:

* After the Village of Glendale Heights, Illinois awarded Ameritech New Media a cable television franchise, the Illinois Cable and Telecommunications Association filed a lawsuit seeking to block or delay Ameritech. The lawsuit was eventually dismissed, but not before Ameritech New Media incurred substantial expense while defending itself against the cable association's litigation.

* After the City of Naperville, Illinois awarded Ameritech New Media a cable television franchise, the Jones Intercable system for Naperville -- the incumbent monopolist -- filed a lawsuit seeking to invalidate the franchise agreement. That lawsuit is still pending.

* In Plymouth, Michigan, shortly after customers began switching from Continental Cablevision (Continental) to Ameritech New Media, an employee of Continental cut several home cable television wires which served Ameritech's New Media customers.

This was not a situation where a construction crew inadvertently cut a cable whose location was inaccurately marked. Rather, the Continental employee with wirecutters walked into the backyards of Ameritech customers and began severing cables. Recent internal reports from Ameritech security indicate that a similar situation has occurred again.

* HBO, a leading programming vendor owned by Time Warner, refused to grant Ameritech New Media access to HBO programming distributed by Continental, the incumbent operator in several Ameritech New Media franchise areas. Continental claimed that, although it did not own the subject cable systems prior to June 1, 1990, the exclusive distribution agreement which was grandfathered under the 1992 Cable Act nonetheless extended to those subsequently - acquired systems. While exclusive agreements post - 1990 are a violation of the 1992 Cable Act, the FCC recently ruled that this exclusive contract technically complied with its program access rules. Nevertheless, the Commission still must recognize that this denial of access impedes a new entrant's ability to provide customers with a robust competitive alternative for comparable video programming. See also Section IV infra.

* It is Ameritech New Media's understanding that some incumbent cable operators have recently stepped up efforts to obtain exclusive arrangements with multiple dwelling unit ("MDU") buildings in communities where Ameritech New Media is entering the market. Some incumbent cable operators, for example, are offering substantial up-front payments to secure such exclusive arrangements.

* In some areas where Ameritech New Media has secured a cable franchise, the incumbent cable operator has recently begun to offer discounts for long term commitments (typically one year), some of which contain penalties for early termination which exceed the savings offered, e.g. \$3 per month discount but a \$5 per month penalty for terminating service in cases other than a physical move of residence.

* In addition, and as the Commission is well aware, several large cable operators and their trade associations continue to lobby the Commission to enforce onerous regulatory rules which govern cable operators which are affiliated with existing local exchange carriers, but then seek to exempt themselves from those same rules even though they are also affiliated with providers of local exchange telephone

service.³ Some of these regulatory rules create additional and unnecessary administrative burdens, entail costs which greatly exceed purported benefits, or are invoked to obtain an unfair competitive advantage.

In short, incumbent cable operators have tried in various ways to stymie Ameritech New Media's efforts to enter the cable television market and to provide customers with a choice for their cable business.

IV.

THE COMMISSION'S PROGRAM ACCESS RULES DO NOT ENSURE THAT COMPARABLE PROGRAMMING WILL BE AVAILABLE TO NEW MVPDs.

As described above, the Commission found an exclusive distribution agreement between HBO and Continental to be in technical compliance with its program access rules because the original agreement was entered into prior to June 1, 1990. Legal merits aside, there can be no doubt that this kind of denial of access impedes a new entrant's ability to provide customers with a robust competitive alternative for comparable video programming. Accordingly, in its next annual report to Congress on the status of competition in the market for the delivery of video programming, the Commission should note the consequences in the marketplace of this serious

³ E.g. In the Matter of Allocation of Costs Associated With Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, Comments of Time Warner Cable, filed May 31, 1996, at p. 9, fn. 8 together with accompanying text.

problem and recommend to Congress that the law be clarified, or if need be changed, to ensure that new cable television providers have access to video programming on reasonable terms and conditions that today is available on an exclusive basis only to certain incumbent cable providers.

This problem is especially in need of a solution given how the Commission currently interprets its program access rules. Incumbent cable operators are able to prevent a new cable operator from having access to popular video programming simply because they entered into exclusive distribution contracts before June 1, 1990, even if the cable system was acquired by the incumbent after that date. Local exchange carriers and their affiliates typically do not have any such exclusive distribution contracts because local exchange carriers generally were barred at that time from providing video programming services, a prohibition that did not pass muster under the First Amendment. Thus, programming developed for local exchange carriers must be made available to all competitors under the Commission's program access rules, but those same competitors are able to use the program access rules to deny local exchange carriers access to certain programming and thereby block or at least delay the entry of a competitive alternative which offers truly "comparable" programming.

V.

**RECENT DEVELOPMENTS EXACERBATE THE PROBLEMS
WITH THE COMMISSION'S PROGRAM ACCESS RULES.**

According to recent press reports,⁴ two broadcast networks, Fox and NBC, are offering exclusive carriage terms for their new 24-hour news channels to incumbent cable operators. For example, TCI reportedly will have hard-line exclusivity for Fox's service in return for TCI's commitment to carry the service on systems serving 10 million subscribers nationwide. And MSNBC is reported to be offering hard-line exclusivity to Jones, Cox, Adelphia and other incumbents in exchange for their commitment to switch from America's Talking to MSNBC. Other press reports⁵ quote industry executives who cite advantages of exclusive carriage over other competitive tactics, as well as the inequity of FCC rules that "penalize" vertically integrated programmers.

This signals the potential for what could become a disturbing trend: programmers who are not subject to the Commission's program access rules unless they are affiliated with a cable operator and distribute programming via satellite, offering new services only to the well-entrenched incumbent cable operator and denying the new would-be cable competitor any access to those same services. This can have a stifling effect on the very competition

⁴ "News Battles Rage On", Multichannel News, July 1, 1996, page 1.

⁵ "Raising the Exclusivity Ante: With competition, the issue for cable heats up", Cable World, July 15, 1996, Page 1.

which Congress is trying to promote in the cable marketplace. Therefore, in making its report to Congress, the Commission should cite these developments and explain how exclusive distribution arrangements of this kind can inhibit the development of meaningful competition in the delivery of video programming to the public.

VI.

CONCLUSION

The Commission's annual report to Congress on the status of competition in the market for the delivery of video programming is an important vehicle for the Commission to communicate vital information to Congress with respect to changes which have occurred in the market over the past year and changes which are likely to occur in the future given the passage

of the Telecommunications Act of 1996. Ameritech New Media trusts that these comments will assist the Commission as it carries out that important task.

Respectfully submitted,

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